

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to planting and harvesting period

The Department of Transportation hereby amends Chapter 520, “Regulations Applicable to Carriers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12, 307A.2, 321.449 and 321.450.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.449 and 321.450.

Purpose and Summary

The Department is amending rule 761—520.8(321), planting and harvesting periods. The Federal Motor Carrier Safety regulations established by the Federal Motor Carrier Safety Administration (FMCSA) impose hours-of-service limits on drivers of commercial motor vehicles, but exempt certain agricultural operations from those hours-of-service limits during the planting and harvesting period. 49 CFR 395.1(k) states that the hours-of-service limits imposed by 49 CFR Part 395, Hours of Service of Drivers, do not apply “during planting and harvesting periods, as determined by each State, to drivers transporting

“(1) Agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;

“(2) Farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or

“(3) Farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.”

The Department implements this exception through rule 761—520.8(321). Rule 761—520.8(321) set the planting and harvesting period in Iowa as the period from March 15 through June 30 and October 4 through December 14.

This set and limited time period has proved too restrictive and inflexible, as it often does not align to changing weather and other conditions that may accelerate, delay, extend, or otherwise alter the planting and harvesting period. To remedy this, other states have defined their planting and harvesting period for this purpose to extend throughout the calendar year, January 1 to December 31, and the FMCSA has accepted this approach. The Department is amending rule 761—520.8(321) to take the same approach and define the planting and harvesting period in Iowa as January 1 to December 31. This change will allow Iowa drivers engaged in the subject agricultural operations to take advantage of the federal hours-of-service exemption whenever they are engaged in those operations, regardless of fluctuations in the actual planting and harvesting period in a given year. The change will also make this declaration of the planting and harvesting period match the declaration of the planting and harvesting period made for restricted commercial driver’s licenses (CDLs), which are licenses issued to suppliers or employees of suppliers of agricultural inputs that allow the license holder to operate commercial motor

vehicles for the purpose of supplying agricultural inputs during planting and harvesting without applying and testing for a full CDL. In January 2017, the Department amended rule 761—607.49(321) to similarly change the planting and harvesting period declared for operation under restricted CDLs from March 15 through June 30 and October 4 through December 14 to January 1 to December 31. Making these declarations match will ensure that agricultural input drivers with restricted CDLs will not be subjected to inconsistent regulations that unnecessarily require them to comply with hours-of-service requirements while performing subject agricultural operations.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 6, 2017, as **ARC 3482C**. This rule making was also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 3483C** on the same date. A public hearing was held on December 28, 2017. Five respondents submitted oral comments in support of the rule making. The Department received written comments from 15 respondents in support of the rule making. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

Adoption of Rule Making

This rule making was adopted by the Department on January 11, 2018.

Fiscal Impact

The fiscal impact of this rule making cannot be determined. This rule making may result in fewer citations being issued for log book violations since the amendment extends the planting and harvesting period to last the calendar year.

Jobs Impact

After analysis and review of this rule making, the Department determined that this amendment should have a positive impact on private sector jobs and employment opportunities in Iowa. Drivers engaged in agricultural operations subject to the exemption and businesses that employ the drivers will have more flexibility to conduct those operations throughout the year, regardless of year-to-year fluctuations in planting and harvesting seasons, and will be able to avoid unnecessarily investing in and using electronic logging devices, which should improve performance, profitability, and opportunity for employment.

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on March 7, 2018, at which time the Adopted and Filed Emergency rule making is hereby rescinded.

The following rule-making action is adopted:

Amend rule 761—520.8(321) as follows:

761—520.8(321) Planting and harvesting ~~periods~~ period. In accordance with the provisions of 49 CFR ~~395.1~~ 395.1(k), the planting and harvesting ~~periods~~ period pertaining to agricultural operations ~~are~~ March 15 through June 30 and October 4 through December 14 is January 1 through December 31.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/31/18.